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the Commission promptly upon request, legible, true, and complete copies of those records that are required to be preserved under this section.

[63 FR 70921, Dec. 22, 1998, as amended at 66 FR 55841, Nov. 2, 2001]

CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

SOURCE: 67 FR 53176, Aug. 14, 2002, unless otherwise noted.

§ 242.400 Customer margin requirements for security futures—authority, purpose, interpretation, and scope.

(a) *Authority and purpose.* Sections 242.400 through 242.406 and 17 CFR 41.42 through 41.49 (“this Regulation, §§ 242.400 through 242.406”) are issued by the Securities and Exchange Commission (“Commission”) jointly with the Commodity Futures Trading Commission (“CFTC”), pursuant to authority delegated by the Board of Governors of the Federal Reserve System under section 7(c)(2)(A) of the Securities Exchange Act of 1934 (“Act”) (15 U.S.C. 78g(c)(2)(A)). The principal purpose of this Regulation (§§ 242.400 through 242.406) is to regulate customer margin collected by brokers, dealers, and members of national securities exchanges, including futures commission merchants required to register as brokers or dealers under section 15(b)(11) of the Act (15 U.S.C. 78o(b)(11)), relating to security futures.

(b) *Interpretation.* This Regulation (§§ 242.400 through 242.406) shall be jointly interpreted by the Commission and the CFTC, consistent with the criteria set forth in clauses (i) through (iv) of section 7(c)(2)(B) of the Act (15 U.S.C. 78g(c)(2)(B)) and the provisions of Regulation T (12 CFR part 220).

(c) *Scope.* (1) This Regulation (§§ 242.400 through 242.406) does not preclude a self-regulatory authority, under rules that are effective in accordance with section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)) or section 19(b)(7) of the Act (15 U.S.C. 78s(b)(7)) and, as applicable, section 5c(c) of the Commodity Exchange Act (“CEA”) (7 U.S.C. 7a-2(c)), or a security futures intermediary from imposing additional margin requirements on security fu-

tures, including higher initial or maintenance margin levels, consistent with this Regulation (§§ 242.400 through 242.406), or from taking appropriate action to preserve its financial integrity.

(2) This Regulation (§§ 242.400 through 242.406) does not apply to:

(i) Financial relations between a customer and a security futures intermediary to the extent that they comply with a portfolio margining system under rules that meet the criteria set forth in section 7(c)(2)(B) of the Act (15 U.S.C. 78g(c)(2)(B)) and that are effective in accordance with section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)) and, as applicable, section 5c(c) of the CEA (7 U.S.C. 7a-2(c));

(ii) Financial relations between a security futures intermediary and a foreign person involving security futures traded on or subject to the rules of a foreign board of trade;

(iii) Margin requirements that clearing agencies registered under section 17A of the Exchange Act (15 U.S.C. 78q-1) or derivatives clearing organizations registered under section 5b of the CEA (7 U.S.C. 7a-1) impose on their members;

(iv) Financial relations between a security futures intermediary and a person based on a good faith determination by the security futures intermediary that such person is an exempted person; and

(v) Financial relations between a security futures intermediary and, or arranged by a security futures intermediary for, a person relating to trading in security futures by such person for its own account, if such person:

(A) Is a member of a national securities exchange or national securities association registered pursuant to section 15A(a) of the Act (15 U.S.C. 78o-3(a)); and

(B) Is registered with such exchange or such association as a security futures dealer pursuant to rules that are effective in accordance with section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)) and, as applicable, section 5c(c) of the CEA (7 U.S.C. 7a-2(c)), that:

(I) Require such member to be registered as a floor trader or a floor broker with the CFTC under Section 4f(a)(1) of the CEA (7 U.S.C. 6f(a)(1)), or as a dealer with the Commission under

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section 15(b) of the Act (15 U.S.C. 78o(b));

(2) Require such member to maintain records sufficient to prove compliance with this paragraph (c)(2)(v) and the rules of the exchange or association of which it is a member;

(3) Require such member to hold itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis; and

(4) Provide for disciplinary action, including revocation of such member's registration as a security futures dealer, for such member's failure to comply with this Regulation (§§ 242.400 through 242.406) or the rules of the exchange or association.

(d) *Exemption.* The Commission may exempt, either unconditionally or on specified terms and conditions, financial relations involving any security futures intermediary, customer, position, or transaction, or any class of security futures intermediaries, customers, positions, or transactions, from one or more requirements of this Regulation (§§ 242.400 through 242.406), if the Commission determines that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors. An exemption granted pursuant to this paragraph shall not operate as an exemption from any CFTC rules. Any exemption that may be required from such rules must be obtained separately from the CFTC.

§ 242.401 Definitions.

(a) For purposes of this Regulation (§§ 242.400 through 242.406) only, the following terms shall have the meanings set forth in this section.

(1) *Applicable margin rules and margin rules applicable to an account* mean the rules and regulations applicable to financial relations between a security futures intermediary and a customer with respect to security futures and related positions carried in a securities account or futures account as provided in § 242.402(a) of this Regulation (§§ 242.400 through 242.406).

(2) *Broker* shall have the meaning provided in section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)).

(3) *Contract multiplier* means the number of units of a narrow-based security index expressed as a dollar amount, in accordance with the terms of the security future contract.

(4) *Current market value* means, on any day:

(i) With respect to a security future:

(A) If the instrument underlying such security future is a stock, the product of the daily settlement price of such security future as shown by any regularly published reporting or quotation service, and the applicable number of shares per contract; or

(B) If the instrument underlying such security future is a narrow-based security index, as defined in section 3(a)(55)(B) of the Act (15 U.S.C. 78c(a)(55)(B)), the product of the daily settlement price of such security future as shown by any regularly published reporting or quotation service, and the applicable contract multiplier.

(ii) With respect to a security other than a security future, the most recent closing sale price of the security, as shown by any regularly published reporting or quotation service. If there is no recent closing sale price, the security futures intermediary may use any reasonable estimate of the market value of the security as of the most recent close of business.

(5) *Customer* excludes an exempted person and includes:

(i) Any person or persons acting jointly:

(A) On whose behalf a security futures intermediary effects a security futures transaction or carries a security futures position; or

(B) Who would be considered a customer of the security futures intermediary according to the ordinary usage of the trade;

(ii) Any partner in a security futures intermediary that is organized as a partnership who would be considered a customer of the security futures intermediary absent the partnership relationship; and

(iii) Any joint venture in which a security futures intermediary participates and which would be considered a customer of the security futures intermediary if the security futures intermediary were not a participant.